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IN THE

Supreme Court of the United States

October Term, 1968

No. 150

FRANCES MATTIELLO,

Appellant,

v.

STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

BRIEF OF APPELLANT

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STATE OF CONNECTICUT,

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ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

BRIEF OF APPELLANT

Opinions Below

The memorandum opinion of the trial court overruling appellant's demurrer is unreported, but has been made a part of the Record (R. 7). The opinion of the Appellate Division of the Circuit Court of Connecticut (R. 12) is reported at 4 Conn. Cir. Ct. 55, 225 A. 2d 507 (1966). The denial of certification by the Supreme Court of Connecticut (R. 20) is reported at —— Conn. ——, 225 A. 2d 201 (1966).

Jurisdiction

The judgment of the Appellate Division of the Circuit Court of Connecticut was entered on November 10, 1966 (R. 11). Petition for certification to the Supreme Court

of Connecticut was filed on November 17, 1966, and denied by that court on December 21, 1966. Notice of appeal to the Supreme Court of the United States was filed with the First Circuit Court of Connecticut on March 20, 1967. On May 18, 1967, the First Circuit Court of Connecticut granted an extension of time under Rule 13 (1) (subsequently amended, effective October 2, 1967), to docket the appeal and file the Jurisdictional Statement until June 2, 1967. The Jurisdictional Statement was filed on June 2, 1967. On March 27, 1968, pursuant to the direction of this Court, the appellant filed an additional response. Probable jurisdiction was noted, and appellant's motion for leave to proceed *in forma pauperis* granted on June 3, 1968. —— U. S. ——, 88 S. Ct. 2037 (1968). The jurisdiction of this Court rests upon 28 U. S. C. 1257 (2).

Constitutional Provision and Statutes Involved

1. U. S. Constitution, Amendment XIV, §1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Section 17-379, *Connecticut General Statutes*:

> "Any unmarried female between the ages of sixteen and twenty-one years who is in manifest danger of falling into habits of vice, or who is leading a vicious life, or who has committed any crime,

may, upon complaint of the prosecuting attorney of the circuit court, be brought before said court for the circuit within whose jurisdiction she resides or is found, and, upon conviction thereof, may be committed, until she has arrived at the age of twenty-one years, to the custody of any institution, except Long Lane School, chartered by the general assembly or incorporated under the general laws for the purpose of receiving and caring for females who have fallen into or are in danger of falling into vicious habits."

3. Section 17-360, *Connecticut General Statutes* (as amended by Public Act No. 152, §20, 1967):

"Women over sixteen years of age belonging to any of the following classes who have been committed by any court of criminal jurisdiction to the commissioner of correction shall be confined in The Connecticut State Farm for Women: First, persons convicted of, or who plead guilty to, the commission of felonies; second, persons convicted of, or who plead guilty to, the commission of misdemeanors, including prostitution, intoxication, drug-using and disorderly conduct; third, unmarried girls between the ages of sixteen and twenty-one years who are in manifest danger of falling into habits of vice or who are leading vicious lives, and who are convicted thereof in accordance with the provisions of section 17-379; fourth, women sentenced to jails. Only such offenders may be committeed to said institutions as in the opinion of the trial court will be benefited physically, mentally or morally by such commitment, and immediately upon commitment, a careful physical and mental examination, by a competent physician, shall be made of each person committed. . . ."

4. Section 17-391, *Connecticut General Statutes* (as amended by Public Act No. 266, §1, 1967):

> "The circuit court may sentence any male person between the ages of sixteen and twenty-one years to the reformatory in any case where the maximum term of imprisonment for the offense committed does not exceed imprisonment in the State Prison for five years. Any person so sentenced shall be sentenced for an indefinite term and may be detained in the reformatory not more than two years."

Questions Presented

1. Do the standards of the Fourteenth Amendment to the United States Constitution apply to *C.G.S.*, §17-379 which, although characterized by the State court as a "protective" statute, permits the State to deprive a young woman of her liberty?

2. Does *C.G.S.*, §17-379 violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution because its terms are so vague and uncertain that it fails to provide both the accused and the trier of fact a fixed standard by which to recognize and measure the proscribed conduct?

3. Does *C.G.S.*, §17-379 violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it invades fundamental rights of an arbitrarily-defined class of individuals, to wit, unmarried females between the ages of sixteen and twenty-one years?

Statement of the Case

On March 17, 1966, the appellant was arrested in Norwalk, Connecticut, and charged with being in "manifest danger of falling into habits of vice," in violation of *C.G.S.*, §17-379 (R. 2). At that time she was within one month of attaining her eighteenth birthday and unmarried.

On April 15, 1966, a substituted information was filed (R. 4) charging appellant with two additional crimes, one alleging "lascivious carriage," in voiolation of *C.G.S.*, §53-219, the other alleging "disorderly conduct," in violation of *C.G.S.*, §53-175. On the same date, the appellant, through appointed counsel, filed a demurrer (R. 6) to the allegation appearing as the first count of the substituted information. The demurrer claimed that §17-379 was unconstitutional on its face in that it violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

After a hearing on May 13, 1966, the demurrer was overruled and a memorandum decision filed by the court (R. 7-8). Thereafter, appellant pleaded not guilty and elected to be tried to the court on all counts of the substituted information. Trial was held on June 10, 1966, and appellant was adjudged guilty of the first two counts and not guilty of the third count. The appellant was committed concurrently on the first two counts to the Connecticut State Farm for Women. She began to serve this sentence on June 10, 1966.

Appellant appealed her conviction of being in "manifest danger of falling into habits of vice," to the Appellate Division of the Circuit Court of Connecticut, assigning as error the overruling of the demurrer. No appeal was taken from the conviction under *C.G.S.*, §53-219. The Appellate Division of the Circuit Court of Connecticut held that since the

statute was non-penal, it was unnecessary to decide the constitutional questions (R. 12, 19).

Following this adverse decision, the appellant filed a timely petition for certification in the Supreme Court of Connecticut for review of the Appellate Division judgment. On December 21, 1966, the Supreme Court of Connecticut exercised its discretion and denied appellant's petition for certification (R. 20).

On February 16, 1967, the appellant was released on parole from the Connecticut State Farm for Women. She will be subject to the terms and conditions of parole until June 10, 1969.

Summary of the Argument

Although *C.G.S.*, §17-379 has been characterized by the State court as a "protective" rather than a "penal" statute, it must still comply with the standards of due process and equal protection since it permits deprivation of liberty. Thus, the State court erred when it refused to decide the constitutional questions presented (Argument I).

The terms "habits of vice" and "vicious life" are so vague and uncertain that the statute is void on its face. The terms have no fixed legal or common sense meaning that would afford an accused a clear standard of conduct. Moreover, the words are so vague that the conduct proven must be measured by the individual predilections of a judge or jury (Argument II).

The statute arbitrarily singles out unmarried females against whom to impose its sanctions. Neither males of the same age group nor married females are liable to commitment for their "habits of vice" or "vicious life." There was neither reason nor necessity for the legislature to single out unmarried females and to seek to stamp out vice and vicious behavior only in them (Argument III).

I. Whether or Not *C.G.S.*, §17-379 Is a Penal Statute, It Must Comply With the Due Process and Equal Protection Standards of the Fourteenth Amendment to the United States Constitution Because the Statute Provides the State a Procedure for Depriving Young Females of Their Liberty.

The Appellate Division of the Connecticut circuit court declined consideration of the due process and equal protection claims first raised by the appellant's demurrer. (Cp. *Wright* v. *Georgia,* 373 U. S. 284, 287, 288 (1963), on the propriety of raising constitutional issues by demurrer.) As grounds for its decision, the Appellate Division held that *C.G.S.,* §17-379 is a protective rather than a penal statute and therefore is not governed by Fourteenth Amendment standards. *State* v. *Mattiello,* 4 Conn. Cir. 55, 225 A. 2d 507, 511 (1966) (R. 12, 19). In a later case the Appellate Division affirmed the protective character of §17-379 and, although examining the identical equal protection claims raised in this case, upheld the statute's constitutionality. The due process claim of vagueness was recognized but dismissed without discussion. *State* v. *Stanley,* —— Conn. Cir. ——, —— A. 2d —— (Vol. VII, App. Div., No. 33, May 12, 1967) (Certification granted by the Connecticut Supreme Court, —— Conn. ——, 235 A. 2d 848 (Dec. 12, 1967)). Recent decisions of this Court indicate that the Appellate Division's conclusion in the instant matter was erroneous, and that the constitutional issues should have been considered.

Even if it is conceded that §17-379 is a protective statute designed to implement a *parens patriae* concern for minor females, the statute must still comply with Fourteenth Amendment standards. *In re Gault,* 387 U. S. 1, 12, 13 (1967). This Court has indicated that its concern is not whether the State labels a statute civil, penal, or protective, but whether the statute "provides the State with a

procedure for depriving [a] defendant of his liberty and his property." *Giaccio* v. *Pennsylvania,* 382 U. S. 399, 402 (1966). If a statute subjects an accused to potential loss of liberty, it must comply with due process and equal protection standards to withstand a challenge on constitutional grounds. *Giaccio* v. *Pennsylvania,* 382 U. S. 399, 402, 403 (1966); *Baxtrom* v. *Herold,* 383 U. S. 107 (1966); *Specht* v. *Patterson,* 386 U. S. 605, 608 (1967).

Section 17-379 provides a procedure for incarcerating young unmarried females in a penal institution. Such incarceration may continue for up to five years, depending on a girl's age at the time of sentencing. On its face the statute provides that a young female convicted under it

> may be committed, until she has arrived at the age of twenty-one years, to the custody of any institution, except Long Lane School, chartered . . . for the purpose of receiving and caring for females. . . .

The only institution in Connecticut chartered for the purpose of receiving and caring for females is the State Farm for Women at Niantic. Felons, misdemeanants, and those committed pursuant to §17-379 are all incarcerated there. Although girls committed pursuant to §17-379 are segregated from the felons, they participate in the same programs and receive the same treatment as adult female misdemeanants. F. LOVELAND, THE CORRECTIONAL INSTITUTIONS AND SERVICES OF CONNECTICUT 45-47 (1966). The misdemeanants include those convicted of prostitution, drug usage, intoxication, petit larceny, and other criminal offenses. *C.G.S.,* §17-360. Although the State Farm provides many rehabilitative programs and facilities, it is still a penal institution. *United States ex rel. Robinson* v. *York,* 281 F. Supp. 8, 14, 15 (D. C. D. Conn. 1968).

Recent statistics indicate that §17-379 is used extensively by the circuit court prosecutors. Within the last

seven years, some five hundred and sixty (560) girls have been charged under the statute. Of this number, nearly half have been convicted and over one-quarter have been committed to the State Farm. See Appendix A. Clearly a statute so widely used as §17-379 which allows the State to commit young females to a penal institution for up to five years cannot escape due process and equal protection scrutiny merely because the State chooses to label it "protective." Hence, the appellant submits that the Fourteenth Amendment standards do apply to §17-379 and that the Appellate Division erred in holding to the contrary.

II. The Terms "Habits of Vice" and "Vicious Life" Render *C.G.S.*, §17-379 Void for Vagueness Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution Because They Fail to Afford the Accused a Clear Standard of Conduct and Fail to Provide the Trier of Fact a Legally Sufficient Standard to Measure the Conduct Proven.

A. *C.G.S.*, §17-379 Is Void for Vagueness Because It Fails to Afford an Accused a Clear Standard of Conduct.

Statutes which provide for deprivation of liberty must be adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. *Giaccio* v. *Pennsylvania,* 382 U. S. 399 (1966). The violation must be defined with appropriate definiteness and employ terms of fixed legal meaning. *Connally* v. *General Construction Co.,* 269 U. S. 385, 395 (1926). These requirements are based on the principle "that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *United States* v. *Harriss,* 347 U. S. 612, 617 (1947).

C.G.S., §17-379 stands condemned by the above authorities because the terms "habits of vice" and "vicious life" are so indefinite and inclusive that they deny an accused her

right "to be informed as to what the State commands and forbids." *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453 (1939). Thus, as this Court noted in *United States* v. *L. Cohen Grocery Co.*, 255 U. S. 81, 89 (1921):

> Observe the section forbids no specific or definite act. . . . It leaves open, therefore, the widest possible inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against.

Since any conduct short of moral perfection is potentially violative, it cannot be said that these terms possess the fixed legal meaning required by *Connally* v. *General Construction Co.*, 269 U. S. 385, 395 (1926) and *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 402, 403 (1966).

Moreover, the terms "habits of vice" and "vicious life" lack that precise common sense meaning which would permit their vagueness to be cured by judicial delimitation. *Sproles* v. *Binford*, 286 U. S. 374, 393 (1932); *State* v. *Andrews*, 108 Conn. 209, 213 (1928). Both legal and general dictionaries indicate how numerous and varied are the meanings of "vice" and "vicious".* Thus, although they

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* Legal dictionaries define "vice" as follows:

BLACK'S LAW DICTIONARY (4th ed. 1951): "vice . . . a fault, defect or imperfection."

RADIN'S LAW DICTIONARY (1955): "vice . . . 2. A defect or imperfection; immoral conduct."

In 44 WORDS AND PHRASES (Perm. ed. 1962), the word "vice" is applied generally to defects in property, while "vicious" relates generally to a propensity in animals.

Dictionaries of general usage define the words as follows:

WEBSTER'S DICTIONARY (3d Int'l ed. 1961): "vice . . . moral depravity or corruption: evil conduct or habits: indulgence of degrading appetites . . . a wrong, degrading, or immoral habit or practice: evil behavior of a particular or accustomed kind . . . a fault or shortcoming that becomes foible . . . a moral flaw. . . ." "vicious . . . having the nature or quality of vice: violative of moral rectitude:

(footnote continued on next page)

are common words in daily use, their generality of usage has resulted in an assortment of definitions instead of any

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contrary to accepted standards of right and good: . . . addicted to vice, immorality, or depravity: corrupt or dissolute in conduct: . . . missing or incompatible with a norm of excellence. . . ."

RANDOM HOUSE DICTIONARY (1967): "vice . . . 1. an immoral or evil habit or practice. 2. immoral conduct; depraved or degrading behavior: . . . 3. sexual immorality, esp. prostitution. 4. a particular form of depravity. 5. a fault, defect, shortcoming, or imperfection: . . ." "vicious . . . 1. addicted to or characterized by vice; grossly immoral; depraved; profligate: . . . 2. given or readily disposed to evil: . . . 3. reprehensible, blameworthy; wrong: . . . 4. spiteful; malicious: . . ."

MURRAY, *et al.*, A NEW ENGLISH DICTIONARY OF HISTORICAL PRINCIPLES (vol. 10, pt. 2, 1928): "vice: . . . 1. Depravity or corruption of morals; evil, immoral, or wicked habits or conduct; indulgence in degrading pleasures or practices. . . . 2. A habit or practice of an immoral, degrading or wicked nature. . . . 4. Moral fault or defect (without implication of serious wrongdoing); a flaw in character or conduct." "vicious: . . . I.1. Of habits, practices, etc.: Of the nature of vice; contrary to moral principles; depraved, immoral, bad. . . . 2. Of persons: Addicted to vice or immorality; of depraved habits; profligate, wicked. . . . 3. Falling short of, or varying from, what is morally or practically commendable; reprehensible, blameworthy, mischievous. . . ."

An extensive search of the cases reveals that where "vice" and "vicious" have been defined, the words generally have been used in relation to property or animals. See e.g., *F. Giovannozzi & Sons* v. *Luciani*, 41 Del. 211, 18 A. 2d 435 (1941). In *McGowan* v. *State*, 83 Okla. Crim. 310, 173 P. 2d 227 (1947), the phrase "vicious or immoral person", as used in a contributing to the delinquency of a minor statute, was discussed but not defined. In *Shutt* v. *Shutt*, 71 Md. 193, 17 A. 1024, 1025 (1889), Chief Justice Alvey made the following comment on the phrase "excessively vicious conduct" as applied to a divorce statute.

> "The terms "excessively vicious conduct" are very indefinite; and of the multitude of vices to which humanity is subject the Legislature has given no intimation as to the class or character of vices to which the statute was intended to apply. It would, however, be difficult to suppose that it was intended to apply to all the multiform vices to which mankind is liable, though indulged in to an excessive degree."

single precise meanings. *In re Newborn,* 53 Cal. 2d 789, 350 P. 2d 116, 121 (1960).

That the words are inadequate to inform an individual of the extent of prohibited conduct "so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary." *United States* v. *L. Cohen Grocery Co.,* 255 U. S. 81, 89 (1921). A young girl is required to guard against all moral and social faults or shortcomings, and yet she is unable to ascertain from the statute the standard of morality or social value. The terms are so vague that an unmarried minor female "of common intelligence must necessarily guess at [their] meaning." *Connally* v. *General Construction Co.,* 296 U. S. 385, 391 (1926). Such vagueness, when the liberty of an individual is at stake, cannot be tolerated under our system of justice.

B. *C.G.S.,* §17-379 Is Void for Vagueness Because It Fails to Provide the Trier of Fact a Legally Sufficient Standard to Measure the Conduct Proven.

No person's liberty may be taken away merely because his conduct offends the capricious sensibilities of the trier of fact.

> It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves . . . judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case. *Giaccio* v. *Pennsylvania,* 382 U. S. 399, 402, 403 (1966).

Section 17-379 lacks the required fixed legal standards to guide the trier of fact. In order to secure a conviction under the statute the prosecution must convince the trier that the violation charged has been proven beyond a reasonable doubt. *State* v. *Hernandez,* 154 Conn. 698, 229 A. 2d 30, 31 (1967). Yet §17-379 does not even indicate the character of conduct that might be legally cognizable as a vice or as

viciousness. The trier is left to devise a legal standard according to his own personal predilections and then to decide whether the prosecution has proven beyond a reasonable doubt that the violations of the trier's standard are in danger of becoming habitual. The process is legally absurd, and the petitioner submits that

> The result is that the application of the law depends not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries. . . . The constitutional guarantee cannot be allowed to rest upon a support so equivocal. *Connally* v. *General Construction Co.*, 269 U. S. 385, 395 (1926).

Because the terms of §17-379 are so vague and indefinite, the petitioner submits that the statute both fails to afford an accused a clear standard of conduct and fails to provide the trier of fact a legally sufficient standard to measure the conduct proven. For these reasons it is submitted that §17-379 violates the Fourteenth Amendment's Due Process Clause and must be held unconstitutional

III. *C.G.S.*, §17-379 Violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution Because, by Applying Only to Unmarried Females Between the Ages of Sixteen and Twenty-one, It Allows the State to Deprive an Arbitrarily-defined Class of Individuals of Their Liberty.

A. A Statute Which Singles Out an Arbitrarily-Defined Class of Individuals and Deprives Its Members of Basic Human Rights Violates the Equal Protection Standards of the Fourteenth Amendment.

The Equal Protection cases decided by this Court in recent years evidence two distinct tests employed to decide the issues raised. The first test requires the challenged

statutory classification to be "reasonably related to the purposes of the Act in which it is found." *Morey* v. *Doud*, 354 U. S. 457, 465 (1957). See also *Williamson* v. *Lee Optical, Inc.*, 348 U. S. 483, 489 (1955); *Rinaldi* v. *Yeager*, 384 U. S. 305, 308 (1966). The second test subjects the challenged classification to the "most rigid scrutiny" to determine whether it is "necessary to the accomplishment of some permissible state objective." *Loving* v. *Virginia*, 388 U. S. 1, 11 (1967). See also *Harper* v. *Virginia Board of Elections*, 383 U. S. 663, 670 (1966); *McLaughlin* v. *Florida*, 379 U. S. 184, 192 (1964); *Reynolds* v. *Sims*, 377 U. S. 533, 561, 562 (1964); *Korematsu* v. *United States*, 323 U. S. 214, 216 (1944); *Skinner* v. *Oklahoma*, 316 U. S. 535, 541 (1942); *United States ex rel. Robinson* v. *York*, 281 F. Supp. 8, 14 (D. C. D. Conn. 1968).

Although the circumstances under which the "necessity" rather than the "reasonableness" test will be applied have not yet been clearly demarcated, an examination of the cases reveals that the necessity test has been invoked consistently where the challenged statutory classification impinges upon a basic personal right, whether civil, political, or "human." Such circumstances were stressed in *Harper* v. *Virginia Board of Elections*, 383 U. S. 663 (1966), in which the Court said:

> We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. 383 U. S. at 670.

Thus in *Loving*, *McLaughlin*, and *Korematsu* this Court struck down discriminatory classifications which infringed upon civil rights. In all those cases the challenged statutes contained classifications drawn along racial lines. In *Reynolds* and *Harper* statutes which diluted the right to vote, a political right, were held unconstitutional. In *Skinner* and *Robinson* statutes infringing upon "sensitive

and important area[s] of human rights'' (*Skinner* v. *Oklahoma*, 316 U. S. 535, 536 (1942)) were invalidated upon equal protection grounds. *Skinner* involved a statute allowing sterilzation of certain criminals, which, according to the Court, infringed upon ''the right to have offspring.'' 316 U. S. at 536. *Robinson* involved a statute which imposed longer prison sentences upon women than men convicted of identical offenses.

If the proper interpretation of the foregoing cases is that a statute will be rigidly scrutinized and evaluated under the necessity test where it appears that its classification infringes upon basic personal rights, these rigid standards should be applied in the instant case. The right infringed by *C.G.S.*, §17-379 is a ''human'' right similar to those involved in *Skinner* and *Robinson*. It is the right of a female adolescent to develop her personality and style of life without state interference unless her conduct clearly violates the state's criminal law. The adolescent years are a crucial developmental period in the life of any individual. During those years a young woman is exposed to a variety of formative cultural experiences which shape her character as an adult. If the state arbitrarily deprives a female adolescent of the opportunity to grow to maturity in free and open society, clearly it has imposed an invidious discrimination upon her. Because §17-379 permits the state to deprive an adolescent female of her liberty arbitrarily, the appellant submits that the statute should be severely scrutinized and constitutionally upheld only if it appears to be necessary to implement a legitimate state purpose.

B. When Equal Protection Claims Are Raised, Court Inquiry Is Not Limited to the Question Whether Those Within the Statutory Classification Are Treated Equally.

Court inquiry is not limited to the question whether those within the statutory classification are treated equally, but extends to consideration of whether the clas-

sification arbitrarily discriminates between those subject to its terms and those excluded. *McLaughlin* v. *Florida,* 379 U. S. 184, 191 (1964); *Rinaldi* v. *Yeager,* 384 U. S. 305, 308 (1966). Pursuing such inquiry, this Court has held that those who have committed intrinsically the same quality of offense must be punished equally, *Skinner* v. *Oklahoma,* 316 U. S. 535, 541 (1942), and that those who are liable to substantially equal disposition must be afforded equal procedural safeguards. *Baxtrom* v. *Herold,* 383 U. S. 107, 110 (1966). Cf. *Specht* v. *Patterson,* 386 U. S. 605, 608 (1967). In subsequent sections of this argument the appellant raises claims similar to those in both *Skinner* and *Baxtrom.* Relying on *McLaughlin* and *Rinaldi,* the appellant submits that this Court has authority to consider those claims.

C. *C.G.S.*, §17-379 Arbitrarily Discriminates Between Males and Females Within the Same Age Group and in so Doing Denies Females Equal Treatment for Identical Behavior.

Section 17-379 applies only to unmarried females between the ages of sixteen and twenty-one years of age. Young women convicted under it may be committed to a penal institution for up to five years. (See Argument I, *supra.*) A male in the same age group is subject to different and considerably milder penalties under an altogether different set of categories. A young male cannot be committed for his "habits of vice" or "vicious life." In order to be subject to any kind of commitment, he must first be convicted of a substantive crime as defined in Title 53 (entitled "Crimes") of the Connecticut General Statutes. Only then can the circuit court sentence him to the reformatory under the provisions of *C.G.S.*, §17-391. Moreover, under §17-391, a young male convicted of a criminal offense would be liable to a maximum sentence of two years in the reformatory.

Two elements of arbitrary and unnecessary discrimination between the treatment of males and females appear from the foregoing comparison. First, males must be convicted of substantive criminal acts under Title 53 before they are liable to commitment. This means that they must be charged with a substantive offense and have all the elements of a criminal act proven against them. Young women, on the other hand, may be committed indefinitely upon a loose showing that they are in "manifest danger of falling into habits of vice" or are "leading a vicious life."

Assuming that society can agree on workable definitions of "vice" and "viciousness," one can assume that the legislature may wish to suppress them. However, it is impossible to comprehend why it was necessary for the legislature to make vice and viciousness legally objectionable only in young females. Female vices are no more dangerous to society than those of the male, and hence cannot be singled out as an evil mainly to be feared. *Patsone* v. *Pennsylvania,* 232 U. S. 138, 144 (1914). Neither is a "vicious" female adolescent more likely to become an adult of bad character than is a "vicious" male adolescent. Clearly, there are no "natural and substantial differences, germane to the subject and purposes of the legislation" which justify this sexual differentiation. *State* v. *Hurliman,* 143 Conn. 502, 506 (1956). See, *Gulf, Colorado & Santa Fe R.R.* v. *Ellis,* 165 U. S. 150, 165, 166 (1896).

The effect of §17-379 is to allow young men to escape punishment for conduct legally condemned in young women. The statute thus contenances unequal treatment for substantially identical behavior and in so doing violates the standards of the Equal Protection Clause as stated in *Skinner* v. *Oklahoma,* 316 U. S. 535, 541 (1942):

> When the law lays an unequal hand on those who have committed intrinsically the same quality of

> offense, . . . it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment.

The second discriminatory element is the disparity of sentences to which males and females are liable. A male convict, sentenced pursuant to *C.G.S.*, §17-391, is liable for a maximum term of two years in the reformatory. Under §17-379, however, a young woman may be sentenced indefinitely to the State Farm for Women. This means that she is liable for a maximum term of five years, depending upon her age at the time of sentencing. Such disparity, which subjects females to greater liability than males, falls squarely within the proscription of *United States ex rel. Robinson* v. *York*, 281 F. Supp. 8 (D. C. D. Conn. 1968). There the court, in ruling upon *C.G.S.*, §17-360, stated:

> Insofar as the future protection of society is concerned, the state has failed to carry its burden in support of the proposition that a greater period of imprisonment is necessary for the deterrence of women than for men. And it is hardly an open question that women, as such, do not deserve greater punishment than men. In our society any discrimination in the treatment of women is benignly in their favor. 281 F. Supp. at 16.

D. *C.G.S.*, §17-379 Arbitrarily Discriminates Between Married and Unmarried Females Within the Same Age Group and in so Doing Denies Unmarried Females Equal Procedural Protection Against Deprivation of Their Liberty.

Arbitrary procedural disparities are among the statutory distinctions violative of equal protection standards. *Baxtrom* v. *Herold*, 383 U. S. 107, 110 (1966). Where there is no legitimate reason for distinguishing between two classes

of individuals and both classes are liable to the same disposition, equal protection standards demand that both classes receive the same procedural protection. *Id.* at 114, 115.

In Connecticut, no matter whether a young woman is married or single, upon her conviction in the circuit court, she is sentenced to the State Farm for Women. *C.G.S.*, §17-360. All inmates, with the exception of felons, receive the same treatment at the State Farm. F. LOVELAND, THE CORRECTIONAL INSTITUTIONS AND SERVICES OF CONNECTICUT 45-47 (1966).

If a young woman is married, she cannot be committed to the State Farm without having first been convicted of a criminal offense under Title 53 of the General Statutes. On the other hand, §17-379 allows a single female of the same age to be committed to the State Farm following a proceeding in which the evidentiary requirements for conviction are so lax that they appear legally standardless. All that must be proven against a single female is that she has somehow violated the trier of fact's personal morality. (See Argument II., B., *supra.*) It is submitted that there is no reason, much less a necessity, for such procedural disparity. To allow an accused's procedural rights to turn on whether she is married or single is an invidious discrimination and a denial of equal protection under the authority of *Baxtrom* v. *Herold,* 383 U. S. 107 (1966).

Upon the basis of the foregoing analysis, the appellant submits that the classification §17-379 embodies permits the State to impose an invidious discrimination upon its unmarried female adolescents. Hence §17-379 cannot withstand the rigid scrutiny that equal protection standards demand, and for this reason must be held unconstitutional.

E. Even if the "Reasonableness" Test Should Be Applied in the Instant Case, *C.G.S.*, §17-379 Cannot Survive a Challenge on Equal Protection Grounds.

According to *Rinaldi* v. *Yeager*, 384 U. S. 305, 309 (1966), court inquiry under the reasonableness test is directed toward determining whether the distinctions focused upon in the statute as classifying features bear a reasonable relation to the legislative purpose. The classifications embodied in *C.G.S.*, §17-379 focus on sex and marital status. Neither of these foci reflect a reasonable relation to the manifest legislative purpose—to control vice and vicious behavior. Such conduct is as objectionable in males and in married females as it is in unmarried females. Thus "there is no fair reason for [this] law which would not require with equal force its extension to others whom it leaves untouched." *Sanger* v. *Bridgeport*, 124 Conn. 183, 189 (1938). Consequently, the appellant submits that §17-379 on its face arbitrarily denies unmarried females equal protection of the law and for this reason is unconstitutional.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment and sentence of the Appellate Division of the Circuit Court of Connecticut and hold that *C.G.S.*, §17-379 is unconstitutional as applied to unmarried females between the ages of sixteen and twenty-one.

Respectfully submitted,

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APPENDIX

APPENDIX A

Statistical Summary of Proceedings Under *C.G.S.*, §17-379

PROCEEDINGS PURSUANT TO SECTION 17-379 CONNECTICUT GENERAL STATUTES, 1961-1967.*

	Number	*Percentage*
Total cases:	560	100.0%
Found guilty:	256	45.8%
Nolle prosequi:	179	31.9%
Found not guilty:	54	9.6%
Referred to the Juvenile Court:	47	8.4%
Boundover to the Superior Court:	24	4.3%

INDIVIDUALS COMMITTED TO THE CONNECTICUT STATE FARM FOR WOMEN PURSUANT TO SECTION 17-379 CONNECTICUT GENERAL STATUTES, 1961-1967.**

Year	*Number*
1961	21
1962	20
1963	26
1964	25
1965	24
1966	17
1967	15
Total:	148

Total committed is equal to 26.4% of total cases.

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* Source: State of Connecticut, Circuit Court, Statistical Reports, Section G, January 1, 1961-November 30, 1967.

** Source: Division of Records, Connecticut State Farm for Women, Niantic, Connecticut.